

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES

2 SKYLINE, 10th FLOOR

5203 LEESBURG PIKE

FALLS CHURCH, VIRGINIA 22041

**AUG 28 1986**

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 86-31-M
Petitioner	:	A.C. No. 31-00052-05504
	:	
v.	:	Pomona Quarry
	:	
MARTIN MARIETTA AGGREGATES,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Broderick

On August 18, 1986, the parties filed a Joint Motion to Approve Settlement and to Dismiss this proceeding. A similar Motion was filed in the case of Secretary v. Yates Construction Co., Inc., Docket No. SE 86-28-M, with which this proceeding was consolidated by order issued April 18, 1986.

The proceeding against Martin Marietta involves two violations alleged in two citations for which penalties in the amount of \$4,157 were sought. By the settlement agreement, the Secretary proposes to "withdraw" the two citations and substitute therefor a new citation charging a violation of 30 C.F.R. § 56.3012 which shall read as follows:

An employee (Daniel Preston Moore) of Yates Construction Company operating at Respondent's mine site on or about April 15, 1985 wrongfully worked between equipment and the pit wall in violation of 30 C.F.R. § 56.3012.

The Secretary represents, and I accept the representation, that the new citation alleges a violation of the standard more directly applicable to the circumstances of this case. A penalty of \$2000 is proposed for the violation which Respondent agrees to pay.

The violation is serious in that it caused or contributed to a fatal accident. Respondent states that it made regular inspections to ensure the safety of the area involved in the